

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2001-259

June 12, 2001

G.M. ALLEN & SONS, INC.  
ENDLESS ENERGY CORPORATION  
Request for Advisory Ruling Regarding  
A Net Energy Billing Contract with  
Central Maine Power Company  
Under Chapter 313

ADVISORY RULING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

In this Advisory Ruling, we conclude that our customer net billing rule (Chapter 313) does not require the customer to have an ownership interest in the generating facility. Therefore, G.M. Allen & Sons, Inc. (Allen) is eligible for net billing. We also conclude that Endless Energy Corporation (Endless Energy) is not a transmission and distribution (T&D) utility by virtue of its service to Allen.

**II. BACKGROUND**

On April 10, 2001, Allen and Endless Energy submitted a request for an Advisory Ruling<sup>1</sup> regarding Allen's eligibility for a net energy billing contract with Central Maine Power Company (CMP) under Chapter 313 of the Commission's Rules. Allen and Endless Energy ask that the Commission determine that customer ownership of the generation facility is not required by the Rule for net billing eligibility. In the alternative, if the Commission concludes that customer ownership is required, Allen and Endless Energy request a waiver of the ownership requirement. Allen and Endless Energy also request that the net energy billing contract be effective retroactively beginning February 7, 2001 and that the Commission confirm that credits be applied on a 12-month rolling basis in accordance with the recent ruling in *Hydrocity: Request for Advisory Ruling*, Docket No. 2001-27 (April 3, 2001) (*Hydrocity*).

Allen owns and operates a blueberry processing facility in Orland, Maine. The Allen facility takes T&D service from Central Maine Power Company (CMP) and currently purchases its electric supply through the standard offer. Endless Energy is a corporation engaged in the business of windpower development. Endless Energy has

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<sup>1</sup> Pursuant to Chapter 110, section 603(a) of our Rules, the General Counsel recommends that the Commission decide to issue an advisory ruling. As an initial matter, we accept the General Counsel's recommendation and decide to issue an advisory ruling.

developed a 50 kW windpower project<sup>2</sup> located on Allen's premises pursuant to a lease agreement. Endless Energy will sell the entire output of the project to Allen. It is anticipated that the project will supply 20% of the facility's annual electrical requirements. During March 2000 and January 2001, Allen requested that CMP enter a net billing contract pursuant to Chapter 313. CMP has declined on the grounds that Allen is not eligible for net billing because Endless Energy, and not Allen, owns the generating project.

Allen and Endless Energy argue that CMP misinterprets Chapter 313 in that nothing in the Rule requires that the customer own the generation facility. According to Allen and Endless Energy, the eligibility criteria in the Rule do not preclude an arrangement whereby the generation facility is owned by a third-party developer who sells the entire output of a generation facility to meet the electricity requirements of the customer. Allen and Endless Energy assert that language in the Rule that refers to the "customer's facility" (as well as other similar language) was not intended to require that a customer have an ownership interest in the facility; rather, such language refers to the facility that is dedicated to serving a particular customer for purposes of net billing. Finally, Allen and Endless Energy argue that, given the purposes of net billing, there is no policy reason to exclude customers who purchase energy from an on-site generation facility owned by a third party.

On April 25, 2001, CMP filed a reply to the Allen/Endless Energy request for an Advisory Ruling. CMP argues that, based on the clear language and intent of Chapter 313, Allen does not qualify for net billing because it does not have an interest in the generation facility. Additionally, CMP states that the alternative request for a waiver should also be denied because the Allen/Endless Energy transaction makes Endless Energy a T&D utility operating without Commission approval.

CMP argues that throughout the Commission's Order that adopted Chapter 313, *Order Adopting Rule and Statement of Factual and Policy Analysis*, Docket No. 98-621 (Dec. 10, 1998) (Chapter 313 Order), language is used that indicates that the Rule is intended to apply only to customer-owned generation. For example, CMP points out that the Order uses the terms "customer" and "generation provider" interchangeably and speaks of customers that "generate their own electricity." Additionally, the Rule itself refers to the "customer's facility" in several places (Ch. 313, § 2(B) and § 3(D)(1)).

CMP also argues that a review of the history of net billing in Maine shows that third party ownership of the generating facility was never contemplated. CMP states that an identity between the generating facility and customer has always been assumed in that the fundamental purpose behind the original net billing provisions (contained in Chapter 36) was to facilitate the sale of energy to a utility by a qualifying facility (QF), which in this case is Endless Energy. CMP argues that it is clear that Chapter 36 contemplated that net billing transactions would be between a QF and the utility and that there is no indication Chapter 313 was intended to expand the scope of net billing.

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<sup>2</sup> The project was financed in part by a Department of Energy grant.

Finally, CMP argues that Endless Energy is unlawfully acting as a T&D utility in that it owns and controls T&D plant (as defined in statute) for public use without Commission authorization. CMP relies on our recent decision in *Request for Commission Investigation Regarding Plans of Boralex Stratton Energy to Provide Electric Service Directly to Stratton Lumber Company*, Docket No. 2000-653 (April 6, 2001) (*Boralex*) in arguing that the transaction is public in nature because Allen and Endless Energy do not have a commercial or corporate relationship beyond the sale of electricity.

On May 1, 2001, Allen and Endless Energy filed a reply to CMP's submission, reiterating that, contrary to CMP's position, Chapter 313 does not contain a generation facility ownership requirement. Allen and Endless Energy also dispute CMP's assertion that Endless Energy, as a result of its provision of power to Allen, is operating as a T&D utility without Commission approval.<sup>3</sup> Endless Energy argues that it does not own or control "T&D plant" as that term is defined in statute and is, therefore, not a T&D utility. Endless Energy states that it owns only those portions of the windmill necessary to generate electricity at the site and does not own any of the equipment that permits electricity to flow from the windmill to either Allen or to CMP.

Endless Energy goes on to state that, even if it owns or operates T&D plant, the delivery of electricity is not for "public use" under applicable Commission precedent and, therefore, Endless Energy is not a utility under Maine law. Endless Energy argues that under the Commission's recent decision in *Boralex*, its transaction with Allen is private in nature and does not constitute a utility service.

On May 2, 2001, the Independent Energy Producers of Maine (IEPM) filed comments, supporting the positions of Allen and Endless Energy. The IEPM argues that Allen qualifies for net billing under the plain language of Chapter 313, that such an interpretation is consistent with the purpose and intent of the Rule, and that Endless Energy is not a T&D utility because it does not provide service to the public.

### III. DISCUSSION

#### A. Net Billing Eligibility

For the reasons discussed below, we conclude that Allen is eligible for net billing under Chapter 313 of our rules.

Sections 3(B) and 3(C) of Chapter 313 govern customer eligibility for net billing. These provisions state:

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<sup>3</sup> Among other things, Allen and Endless Energy argue that the issue of whether Endless Energy is a T&D utility is not relevant to the question of whether Allen is eligible for net billing.

B. Customer Qualification. Any customer of a transmission and distribution utility that uses energy generated using a renewable fuel or technology as specified in 35-A M.R.S.A. § 3210(2)(C) from a facility with an installed capacity of 100 kW or less to serve its own electricity requirements may elect net energy billing.

C. Customer Use. For purposes of this section, the renewable facility must be located on or in the vicinity of the customer's premises and used primarily to offset part or all of the customer's own electricity requirement.

There is no dispute that the energy provided to Allen will be generated using a renewable technology, that the generating facility has an installed capacity of less than 100 kW, and that the facility is located on the customer's premises and will be used to offset the customer's own electricity requirements. The only issue, therefore, is whether Allen must have an ownership interest in the generating facility to be eligible for net billing. We find that customer ownership is not an eligibility requirement of the net billing rule.

As noted above, sections 3(B) and 3(C) govern the eligibility requirements for net billing. A review of the language of these provisions reveals no explicit customer ownership requirement. We do agree with CMP that language in other provisions of the Rule and throughout the Chapter 313 Order suggest a presumption that the net billing customer would own the generating facility. However, the issue of whether there should be a customer ownership requirement was never raised in the Chapter 313 rulemaking, and the language in the Rule and Order is simply a consequence of the fact that net billing customers have historically owned the generating facility.<sup>4</sup> Accordingly, we do not consider the language in the Rule and Order referred to by CMP to be determinative on the issue of whether customer ownership of the generating facility is an eligibility requirement.

Because the Rule is silent on an ownership requirement, we consider the purposes of net billing as discussed in the Chapter 313 Order. In the Chapter 313 Order, we stated that:

net billing . . . has developed into a means of encouraging the use of small-scale renewable technologies designed

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<sup>4</sup> We also agree with CMP that Chapter 36 contemplated an identity between the generating facility and the net billing customer in that the original intent of net billing was to facilitate energy sales from very small QFs to utilities. However, we disagree with CMP's characterization that the absence of an ownership requirement for current net billing arrangements is an expansion of the scope of net billing. Rather, we view the absence of such a requirement to be consistent with our intent to modify net billing to be workable in a restructured industry.

primarily to serve the customer's own electricity needs. The promotion of such an outcome is consistent with legislative policies favoring renewable generation and energy efficiency. 35-A M.R.S.A. §§ 3210, 3211. As a result, our view is that a long-standing billing and metering practice that facilitates customers' abilities to meet their own loads through renewable resources is not a practice that should be eliminated solely as a result of industry restructuring. Instead, the practice should be modified so as to be workable in a restructuring [sic] environment.

Chapter 313 Order at 3. The purpose of the Rule is to facilitate the use of small-scale renewable generation to meet individual customer electricity needs. We can discern no logical reason to make an eligibility distinction based on whether the customer has some type of ownership interest in the generating facility.<sup>5</sup> As long as the generation facility is "dedicated" to the customer, in that it is located on or in the vicinity of the customer's premises and used primarily to offset the customer's electricity requirements, the basic requirements contemplated by the Rule are fulfilled.

Because the Rule does not explicitly require that the customer have an ownership interest in the generation facility and such a requirement would not be consistent with the general purposes of the rule, we conclude that Allen is eligible for net billing. Allen's net billing contract should be retroactive to February 7, 2001, the date upon which the facility began generating power. Finally, at the request of Allen, we confirm that the credits should be applied on a 12-month rolling basis consistent with our recent ruling in *Hydrocity*.

B. Utility Status

We find that, under the factual circumstances presented, Endless Energy is not a T&D utility by virtue of its service to Allen.<sup>6</sup>

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<sup>5</sup> In the Chapter 313 Order, we did recognize that net billing does have costs in terms of reduced utility revenue and increased administrative expense. However, we noted that the Rule's structure, which does not require payment for excess generation, effectively restricts net billing to generation used primarily to offset a customer's electricity needs. *Id.* at 4, 6. The Rule also contains a provision requiring the Commission to review the costs and benefits of net billing when generating capacity under the Rule reaches 0.5 percent of the utility's peak demand. Ch. 313, § 3(H).

<sup>6</sup> Endless Energy and Allen argued that the issue of utility status is not relevant to the issue of Allen's eligibility for net billing. Although this is true, CMP has essentially asked for a ruling on the matter based on the factual pattern presented in this proceeding. Judicial economy dictates that we address the issue in this Ruling.

A T&D utility is defined by statute as an entity that owns, controls or manages T&D plant for compensation within the State. 35-A M.R.S.A. § 102(20-B). T&D plant is defined as:

real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, distribution or delivery of electricity for light, heat or power for public use and includes all conduits, ducts and other devices, materials, apparatus and property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for public use.

35-A M.R.S.A. § 102(20-A). We agree with Endless Energy that it does not own, control or manage T&D plant as defined by statute and is, therefore, not a public utility under State law.

As part of its submissions in this proceeding, Endless Energy filed the affidavit of Ralph Chapman, a consulting project manager with Endless Energy. In the affidavit, Mr. Chapman supports the position that Endless Energy does not own, control or manage any T&D plant. Mr. Chapman explains that power and instrumentation cables run from the base of the windmill tower for approximately 150 feet to the nearest building where they are connected to the windmill's control system and that a power cable runs from the control system to a disconnect switch located in the same room. Mr. Chapman states that Endless Energy owns everything on the windmill side of the disconnect switch and that all such equipment is integral to the windmill's production of electricity; Endless Energy does not own any equipment or wiring on the other side of the disconnect switch.

Based on Mr. Chapman's descriptions, we agree that the equipment owned by Endless Energy is related to the generation of electricity and not to its transmission or distribution. Therefore, Endless Energy is not a T&D utility as a result of its provision of electricity to Allen. Because we conclude that that Endless Energy does not own, control or manage facilities that can be characterized as T&D plant pursuant to the statutory definition, we need not address the question of whether its facilities are for "public use" under the factors recently articulated in *Boralex*.

**IV. CONCLUSION**

Consistent with the discussion above, CMP shall enter a net billing contract with Allen effective February 7, 2001.

Dated at Augusta, Maine, this 12th day of June, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

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5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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